

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA**  
LYNCHBURG DIVISION

GLENN W. PHILLIPS,  
AND  
JANET PHILLIPS,

*Plaintiffs,*

v.

BRUTON A. LANGLEY

*Defendant.*

CASE NO. 6:13-cv-00051

ORDER

JUDGE NORMAN K. MOON

This matter is before the Court upon consideration of the *pro se* Plaintiffs' verified petition seeking "Emergency Preliminary Injunction to Set Aside a Lower Court Judgment Obtained by Fraud upon the Court by Respondent's Concealing and Suppressing Evidence of Federal Crimes." See Docket no. 1. For the following reasons, the motion is hereby DENIED, without prejudice.

In their Petition, Plaintiffs Glenn W. Phillips and Janet Phillips (hereinafter "Plaintiffs") allege B.A. Langley (hereinafter "Defendant") concealed and suppressed evidence, committing a fraud on the Lynchburg General District Court. Pls.' Pet. At 1–2. As a result, Plaintiffs claim they will be "fraudulently evict[ed]" and ask this Court to set aside the judgment of the Lynchburg General District Court, which apparently allows their eviction. *Id.* at 5. Plaintiffs allege they are residents of Lynchburg, Virginia, as is Defendant. *Id.* at 2.

The allegations in the Petition are vague, but Plaintiffs seem to claim that Defendant will inflict "continued serious and irreparable bodily, emotional and mental harm" by forcibly removing them from their home, all in retaliation and due to "[Plaintiffs'] knowledge of [Defendant's] crimes."

*Id.* at 2–3. Defendant achieved this end by “commit[ing] perjury” on the General District Court and by “intentional concealment and suppression of vital documents” from that Court, according to Plaintiffs. *Id.* Plaintiffs allege they will be irreparably harmed by this eviction, in part because of their “grievous medical and health afflictions.” *Id.* at 5. Likewise, Plaintiffs claim there is “more than a substantial likelihood and certainty” they will prevail in this action because they have *prima facie* evidence of Defendant’s fraud on the court, that he committed federal crimes (including “Income Tax Evasion with a Federally Chartered Bank by Money Check Laundering”), and that he concealed evidence and committed perjury in Lynchburg General District Court. *Id.* at 4. Since Defendant committed this fraud, Plaintiffs argue the threatened and existing harm to them outweighs any to Defendant, and that no substantial public interest contravenes granting their requested injunction. *Id.* at 4.

In order to obtain preliminary injunctive relief under Federal Rule of Civil Procedure 65, plaintiffs must show that: (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in their favor; and (4) a preliminary injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Real Truth About Obama, Inc. v. FEC*, 575 F.3d 342, 346–47 (4th Cir. 2009), *vacated on other grounds*, 130 S. Ct. 2371 (2010). The substantive standard for an *ex parte* temporary restraining order is the same as that for a preliminary injunction. *See, e.g., Virginia v. Kelly*, 29 F.3d 145, 147 (4th Cir. 1994) (applying preliminary injunction standard to a request for temporary restraining order).

In the instant case, Plaintiffs seek a “preliminary injunction,” *ex parte*. Therefore, I will treat Plaintiffs’ petition for an emergency preliminary injunction as a motion seeking a temporary restraining order pursuant to Federal Rule of Civil Procedure 65(b), which permits a court to issue a

temporary restraining order without notice to the adverse party in certain circumstances.

“Ex parte temporary restraining orders are no doubt necessary in certain circumstances.” *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974) (citation omitted). However, “[t]he stringent restrictions imposed . . . by Rule 65, on the availability of ex parte temporary restraining orders reflect the fact that our entire jurisprudence runs counter to the notion of court action taken before reasonable notice and an opportunity to be heard has been granted both sides of a dispute.” *Id.* at 438–39. The “stringent restrictions” of Rule 65 include two procedural requirements that a movant must satisfy before a court may issue a temporary restraining order. First, the movant must set forth “specific facts in an affidavit or a verified complaint [that] clearly show the immediate and irreparable injury . . . [that] will result to the movant before the adverse party can be heard.” Fed. R. Civ. P. 65(b)(1)(A). Second, “the movant’s attorney [must] certify in writing any efforts made to give notice and the reasons why it should not be required.” Fed. R. Civ. P. 65(b)(1)(B).

Although Plaintiffs have stated many of the legal phrases this Court considers in examining a motion for a temporary restraining order, they have not asserted specific, particular facts showing immediate and irreparable injury will occur absent the relief they seek.<sup>1</sup> Even if Plaintiffs were evicted, that injury is not irreparable. *See, cf. Elias v. Elias*, No. 12-11602-JLT, 2013 WL 3777069, at \*9 (D. Mass. July 15, 2013) (holding plaintiff’s allegation the father of her child would leave the country with the child did not allege sufficient harm because she had not shown the child could not

---

<sup>1</sup> It is questionable, from the vague factual allegations in Plaintiff’s Petition, whether this Court even has jurisdiction to hold a hearing and issue a temporary restraining order. Federal district courts have diversity jurisdiction over civil actions between citizens of different states where the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a). Plaintiffs allege in their Petition that both they and Defendant reside in Lynchburg, Virginia; thus, this Court likely does not have diversity jurisdiction. Federal district courts also have jurisdiction over cases involving federal questions, from civil actions which “aris[e] under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Plaintiffs’ Petition presents no specific facts alleging this case involves a federal question.

return). Plaintiffs likewise failed to provide specific facts that clearly show their immediate and irreparable injury will occur before Defendant can be heard on their claims.

Plaintiffs also have not given this Court sufficient factual information to show they are likely to succeed on the merits of their claim that Defendant perpetrated a fraud on the state court. The Petition asserts at various points that Defendant violated income tax laws, committed perjury in state court, concealed and suppressed evidence there, and retaliated against Plaintiffs for their knowledge of his crimes by evicting them. But Plaintiffs do not detail the evidence of these violations, provide the relevant underlying facts, nor specify any causes of action on which a claim for preliminary injunction would be based. They do not provide any actionable legal theories upon which liability would be found, or upon which relief could be granted. Without such information, this Court cannot assess their likelihood on the merits. Neither can it assess whether the balance of equities tips in Plaintiffs' favor, or whether a temporary restraining order would be in the public's interest.

Finally, Plaintiffs have not certified in writing any efforts made to put Defendant on notice of the motion, nor have they offered any reason as to why notice should not be required. Failure to do so provides grounds for this Court to deny the motion. The requirements of Rule 65(b)(1) are not merely technical niceties that a court may easily disregard; rather, they are crucial safeguards of due process. *See Austin v. Altman*, 332 F.2d 273, 275 (2d Cir. 1964); *see also Jourdan v. Jabe*, 951 F.2d 108, 109-10 (6th Cir. 1991) (holding that a *pro se* litigant is not entitled to special consideration with respect to straightforward procedural requirements that a lay person can comprehend as easily as a lawyer). Accordingly, because Plaintiffs have failed to comply with the requirements of Rule 65(b), their motion for a temporary restraining order must be denied.

Therefore, this Court DENIES Plaintiffs' Verified Petition for an Emergency Preliminary Injunction, which I have construed as a motion for a temporary restraining order, WITHOUT PREJUDICE.

It is so ORDERED.

The Clerk of the Court is hereby directed to send a certified copy of this Order to Plaintiffs and to any counsel of record.

Entered this 7<sup>th</sup> day of October, 2013.

  
\_\_\_\_\_  
NORMAN K. MOON  
UNITED STATES DISTRICT JUDGE